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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,717	06/01/2001	Tara J. Valentin	HANN-0001	1429

23550 7590 05/19/2004

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT PAPER NUMBER

3761

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/871,717	Applicant(s) VALENTIN ET AL.	
	Examiner Jacqueline F Stephens	Art Unit 3761	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the _____ application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-63.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


 JOHN D. CALVERT
 SUPERVISORY PATENT EXAMINER
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Continuation of 5. does NOT place the application in condition for allowance because: Applicant argues "the Roe diaper is designed such that the top front of the diaper is aligned with the top back of the diaper. Figure 3. The present invention includes a back guard that extends vertically from the rear portion of the diaper. Thus, Roe does not have a back guard as contained in the present invention". Roe teaches an invention with a fold down waist feature that enables the user to longitudinally extend the diaper in the back waist region, resulting in a high back or low back configuration. The rear of the diaper can not be aligned with the front of the diaper in both the high back and low back configurations.

Applicant further argues "high back configuration" of Roe does not denote a middle back area of a user. Roe specifically teaches the rear waist region extends longitudinally outwardly from the rear waist edge. However, 'high back configuration' and 'middle back area' are relative terms - relative to the size of a user. Applicant further argues the high back configuration of the waist feature in Roe simply allows the Roe diaper to be worn as a regular diaper at or about the waist and the range of lengths is specifically designed to provide the optimum range of lengths to allow the back member to extend to the middle back of the user, depending on the user's size. Firstly, the term "high back configuration" connotes the diaper reaches the back of a user. The examiner maintains applicant has not provided criticality for the specific length since in applicant's disclosure, page 9, it states "Accordingly, it should be realized that length 30 of back guard 18 can be of any value or range of values between 1.0 and 24.0 inches. These possible lengths and/or ranges of lengths are intended to apply to all embodiments of the present invention described herein". Therefore, one could also argue the lower range of the length of the back guard, 1", would not reach a middle back area of a user, particularly on an adult diaper. Roe provides the teaching of longitudinally extending a diaper from the waist in the rear region. In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.